

**UNSEEN ABUSE: ELEVATING ANIMALS’ STATUS AS  
VICTIMS UNDER THE LAW TO EFFECTIVELY RESCUE PET  
VICTIMS OF MUNCHAUSEN SYNDROME BY PROXY**

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Introduction ..... 78

I. What is Munchausen Syndrome by Proxy?..... 79

II. Munchausen Syndrome by Proxy Manifesting in Pet Victims ..... 80

III. How Can Law and Policy Address Issues of Munchausen Syndrome by  
Proxy with Pet Victims? ..... 83

    A. Implement Laws that Allow Vets to Confiscate Abused Animals .... 84

    B. Provide Swift Civil Dispositional Hearings Based on the Owner’s  
    Ability to Adequately Care for the Pet..... 87

Conclusion..... 92

INTRODUCTION

In pop culture, sensationalized stories of Munchausen Syndrome by Proxy (MSBP) abuse cases have captivated audiences.<sup>1</sup> This nuanced abuse phenomenon has also perplexed academia since its first recognition in 1977.<sup>2</sup> While most known MSBP cases involve caregivers fabricating—or inducing—symptoms in their children to get sympathy and attention, MSBP cases involving pet victims have surfaced in recent years. This area of abuse

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1. Sarah Kim, *The Performances In Hulu’s ‘The Act’ Are Award-Winning, But The Show Itself Is Largely Problematic*, FORBES (Sep 23, 2019), <https://www.forbes.com/sites/sarahkim/2019/09/23/the-act-hulu-disability-representation/?sh=46710b6d659> (providing that the story of Gypsy Rose Blanchard, as portrayed in *The Act* (2019), gained nationwide popularity and won Patricia Arquette an Emmy award for her portrayal of the abuse perpetrator Dee Dee Blanchard).

2. Roy Meadow, *Munchausen Syndrome by Proxy: The Hinterland of Child Abuse*, 310 LANCET 343, 345 (1977).

is both under-studied and under-documented.<sup>3</sup> But as it gains more attention, scholars anticipate that more animal victim cases will be identified.<sup>4</sup> Law and policy must concurrently evolve to best provide relief for animals suffering under their owners' "care."

Unlike child MSBP victims, the law considers animals as property.<sup>5</sup> Their legal status as property results in an incoherence with laws which aim to protect animals and prevent animals victims.<sup>6</sup> Due to this complicated reality, this paper suggests two interventions which will prioritize animals as victims and provide the best opportunity to rescue them. First, enact laws that grant veterinarians the authority to confiscate animals that they suspect are victims of abuse. This intervention subordinates animals' status as property to rescue abuse victims before it is too late. Second, provide for swift civil dispositional hearings regarding the animal's ownership based on their owner's fitness. Such hearings will give pet MSBP victims the best opportunity to be separated from abusive owners. With quick hearings that can terminate ownership, these victims can recover and be adopted out to new, loving homes.

Part I of this paper provides a brief background on MSBP. Part II discusses documented MSBP cases with pet victims, highlighting the need for intervention. Part III discusses the two interventions that provide the best opportunity to rescue pet MSBP victims: (1) granting veterinarians the authority to confiscate suspected abused animals and (2) implementing swift civil dispositional hearings.

## I. WHAT IS MUNCHAUSEN SYNDROME BY PROXY?

Munchausen Syndrome by Proxy (MSBP), also called medical child abuse,<sup>7</sup> is a unique and baffling form of abuse. MSBP occurs when a caretaker falsifies—or even causes—a child's illness or injury and then seeks out medical treatment.<sup>8</sup> The caretaker often denies knowing the source or

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3. See James A. Oxley & Marc D. Feldman, *Complexities of Maltreatment: Munchausen by Proxy and Animals*, 21 *Companion Animal* 586, 588 (2016) (explaining case research has been mostly limited to mostly individual case studies).

4. *Id.*

5. Katie Galanes, *The Contradiction: Animal Abuse—Alive and Well*, 44 *J. MARSHALL L. REV.* 209, 209–210 (2010).

6. See generally Taimie L. Bryant, *Sacrificing the Sacrifice of Animals: Legal Personhood for Animals, the Status of Animals as Property, and the Presumed Primacy of Humans*, 39 *RUTGERS L. J.* 247, 252 (2008).

7. Oxley & Feldman, *supra* note 3, at 586.

8. Meadow, *supra* note 2, at 343.

cause of the illness.<sup>9</sup> Generally, the child's symptoms or illnesses disappear when the child is separated from their caretaker.<sup>10</sup>

MSBP can manifest in three distinct ways: outright falsification of medical injuries or illnesses; the tampering of medical records or test results, and; the physical inducement of injuries or illnesses in a child.<sup>11</sup> These avenues of abuse have also been documented to manifest in pet victims.<sup>12</sup> It is thought that mothers or caretakers engage in this behavior to find a sense of purpose, for example, to feel fulfilled as a mother in taking care of their child.<sup>13</sup> These caretakers have extensive medical knowledge and cooperate happily with medical staff and doctors.<sup>14</sup> They thrive in the hospital environment.<sup>15</sup>

MSBP can be difficult to identify and diagnose.<sup>16</sup> A particular nuance of these cases is that these caretakers, who fabricate—or induce—illnesses in their children, are suffering from a mental illness themselves.<sup>17</sup> MSBP is treated as a rare occurrence, with the most sensationalized and unusual cases getting widespread attention.<sup>18</sup> The general belief is that MSBP rarely occurs.<sup>19</sup> This belief overshadows the data indicating that this syndrome is more prevalent than perceived, which leads to cases slipping through the cracks and remaining unidentified.<sup>20</sup> Unfortunately, as cases remain unidentified, child victims stay in abusive situations that can ultimately lead to their deaths.<sup>21</sup>

## II. MUNCHAUSEN SYNDROME BY PROXY MANIFESTING IN PET VICTIMS

For the reason that young children present as ideal victims, pets are also perfect victims for MSBP abuse. Young children do not understand what is happening to them, whether the caretaker is lying about the child's illness or

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9. Donna A. Rosenburg, *Web of Deceit: A Literature Review of Munchausen Syndrome by Proxy*, 11 CHILD ABUSE & NEGLECT, 547, 549 (1987).

10. *Id.*

11. Christopher Bools, Brenda Neale & Roy Meadow, *Munchausen Syndrome by Proxy: A Study of Psychopathology*, 18 CHILD ABUSE & NEGLECT 773, 773 (1994); H.M.C. Munro & M.V. Thrusfield, 'Battered Pets: Munchausen Syndrome by Proxy (Factitious Illness by Proxy)', 42 J. SMALL ANIMAL PRAC. 385, 386 (2001).

12. Munro & Thrusfield, *supra* note 11, at 386.

13. Rosenburg, *supra* note 9, at 548.

14. Michael T. Flannery, *Munchausen Syndrome by Proxy: Broadening the Scope of Child Abuse*, 28 U. RICH. L. REV. 1187, 1190 (1994).

15. *Id.*

16. *See id.* at 1182 (explaining that cases of MSBP are often unreported because people working in hospitals and court rooms do not recognize it).

17. Bools et al., *supra* note 11, at 783.

18. Flannery, *supra* note 14, at 1188.

19. *Id.*

20. *Id.*

21. Oxley & Feldman, *supra* note 3, at 588.

inducing it themselves.<sup>22</sup> Young child victims also cannot verbalize what is happening to them—just as pets cannot.<sup>23</sup> Additionally, pets, like young children, are wholly dependent on their caregivers.<sup>24</sup>

Over the past 25 years, pet MSBP-victim cases have begun to surface.<sup>25</sup> The first veterinary research study of this victimization was conducted by H.M.C. Munro and M.V. Thrusfield through the Royal School of Veterinary Studies at the University of Edinburgh, and was published in the *Journal of Small Animal Practice* in 2001.<sup>26</sup> This study identified that out of 448 cases of non-accidental injury in animals reported by 1,000 randomly selected veterinary surgeons in the United Kingdom, six cases were described as MSBP cases.<sup>27</sup> Three possible MSBP cases were also identified.<sup>28</sup> These cases involved mostly dogs and cats, but one case involved eight to twelve different pets of unidentified species.<sup>29</sup> In three of the cases, the animals died at the hands of their owners, while in two cases, the animals were euthanized due to their injuries.<sup>30</sup>

The veterinarians reporting these cases documented several clinical factors of MSBP.<sup>31</sup> They noted that some owners exhibited attention-seeking behavior, such as repeated requests for their animals' treatment.<sup>32</sup> In some cases, the pets recovered from their illnesses or injuries following separation from their owners.<sup>33</sup> One veterinarian suspected that an owner interfered with the treatment administered to the animal.<sup>34</sup> Another veterinarian documented that an owner engaged in *vet shopping*, which is similar to *doctor shopping* (frequently changing providers, an established feature for child MSBP victims).<sup>35</sup> In one animal's case, the veterinarian noted a series of incidents over several years.<sup>36</sup> In another case, the owner's pets died in suspicious and

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22. Flannery, *supra* note 14, at 1199.

23. *See id.* (explaining that young children, like animals, suffer abuse in silence).

24. James A. Oxley & Marc D. Feldman, *More Research Needed for Munchausen by Proxy and Pets*, 248 J. AM. VETERINARY MED. ASS'N., 1229, 1229 (2016).

25. Marc D. Feldman: *Canine Variant of Factitious Disorder by Proxy*, 154 AM. J. PSYCHIATRY 1316, 1316 (1997) [hereinafter "*Canine Variant*"] ("A 1995 survey of veterinarians suggested that household pets may become the surrogates used by individuals who seek engagement with health care practitioners.").

26. H.S. Tucker, F. Finlay & S. Guiton, *Munchausen Syndrome Involving Pets by Proxies*, 87 ARCHIVES OF DISEASE IN CHILDHOOD 263, 263 (2002).

27. Munro & Thrusfield, *supra* note 11, at 386.

28. *Id.* at 387.

29. *Id.*: Hal Herzog, *Hurting Pets to Get Attention and Drugs: A Growing Problem*, PSYCH. TODAY (Aug. 20, 2018), <https://www.psychologytoday.com/us/blog/animals-and-us/201808/hurting-pets-get-attention-and-drugs-growing-problem>.

30. Munro & Thrusfield, *supra* note 11, at 387.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 388–89.

36. *Id.* at 387.

unexplained circumstances.<sup>37</sup> One veterinarian noted that the animal seemed to fear their owner.<sup>38</sup> Another pet victim was only recognized because the owner was prosecuted and convicted for attempting to poison their child.<sup>39</sup>

Pet-MSBP-victim prevalence has not been studied in the U.S. as it has in the U.K., but there has been anecdotal documentation. Dr. Marc Feldman, from the University of Alabama, has written on this issue. Dr. Feldman described one case where an owner repeatedly brought their dog to the veterinarian, claiming it was suffering from a stomach disorder.<sup>40</sup> This owner eventually admitted that they were starving the animal to get attention and sympathy.<sup>41</sup> After a local breeder confiscated the dog, the dog regained its health and thrived.<sup>42</sup>

Further anecdotes regarding potential MSBP cases with pets as proxies pop-up on online message boards where veterinarians and concerned peoples share stories about suspected cases.<sup>43</sup> Some pet MSBP cases manifest on the internet, where perpetrators use social media to gain sympathy from others regarding the medical conditions of their pet.<sup>44</sup> These cases are known to scholars and researchers but have “not been addressed in the professional literature.”<sup>45</sup>

A mainstream U.K. news outlet featured a criminal case involving MSBP with a pet victim. In this 2013 case, veterinary nurse Georgiana Bretman was charged and convicted for “causing an animal unnecessary suffering” by deliberately poisoning her cocker spaniel, Flo, with insulin.<sup>46</sup> Bretman’s peers were suspicious of her attention-seeking behavior and the disappearance of Flo’s symptoms—collapsing, twitching, and vomiting—between her “episodes.”<sup>47</sup> The employer suspected that insulin was being administered to Flo as the test results following episodes showed low glucose levels.<sup>48</sup> When a court found Bretman guilty, it noted she “show[ed] no remorse” for what she did.<sup>49</sup> Although she was not sentenced to any jail time, she was required to perform 140 hours of unpaid work under a Community

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37. *Id.*

38. *Id.*

39. *Id.* at 386.

40. *Canine Variant*, *supra* note 25, at 1316.

41. *Id.* at 1317.

42. *Id.*

43. *Can Dogs Be Victims of Munchausen by Proxy?*, DOGSTER (Feb. 12, 2013), <https://www.dogster.com/lifestyle/dogs-victims-munchausen-by-proxy>.

44. Oxley & Feldman, *supra* note 24, at 587.

45. *Id.*

46. Ashlie McAnally, ‘Munchausen Syndrome by Pet Proxy’ Vet Nurse Spared Jail After Poisoning Her Own Dog, DAILY RECORD UK: NEWS: CRIME (Sept. 22, 2017), <https://www.dailyrecord.co.uk/news/crime/munchausen-syndrome-pet-proxy-vet-11219003>.

47. *Id.*

48. *Id.*

49. Georgina Bretman, ROYAL COLL. VETERINARY SURGEONS ¶ 30, at 10 (May 21, 2019).

Payback Order; she was disqualified from owning a dog for 2 years, and; she was suspended from her position as a veterinary nurse.<sup>50</sup> This was the first prosecution and conviction of a perpetrator for this kind of abuse in the U.K.<sup>51</sup> Flo was taken into possession by the Scottish Society for Prevention of Cruelty to Animals (SSPCA) to be re-homed.<sup>52</sup>

Overall, the incidence rate of MSBP with pet victims is unknown due to the almost complete lack of research on this particular form of animal abuse.<sup>53</sup> The existing research consists of individual case studies, such as the Feldman study and the Munro and Thrusfield study of U.K. vets, which involve only cats and dogs; although, a case of MSBP involving a horse has recently been documented.<sup>54</sup> This field of study requires additional research to shed light on the scope of this abuse. Pets, as dependent and voiceless beings, are perfect victims. Through further research, the scope of this issue can be defined, and mechanisms for identifying and reporting these cases can be improved. The lives of innocent animals can be saved. But, in order to rescue these victims, effective legal interventions must be implemented.

### III. HOW CAN LAW AND POLICY ADDRESS ISSUES OF MUNCHAUSEN SYNDROME BY PROXY WITH PET VICTIMS?

Although the research on MSBP abuse is limited, existing studies clearly show that there are identifiable cases of MSBP with pet victims. With additional research, the scope of this issue will widen, and it will become necessary to implement proper mechanisms to best rescue and care for animal victims.

Animals' status as property is a barrier to effective intervention when animals are also victims. This Part will explore two major interventions that elevate animals' victim status, superseding their status as property. The first is to allow veterinarians to confiscate animals they suspect are being abused. The second is to allow for swift civil dispositional hearings based on the owner's ability to adequately care for the animal.

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50. *Id.* ¶ 31.

51. *Id.*

52. *Id.* ¶ 9, at 5.

53. Oxley & Feldman, *supra* note 24, at 588.

54. *Id.*

*A. Implement Laws that Allow Vets to Confiscate Abused Animals*

Animals' status as property is a barrier to preventative rescue measures, resulting in a fundamental incoherence with the goals of animal abuse prevention laws. When an animal is a victim of MSBP, removing the animal from the dangerous home situation is the most immediate need; the animal is in constant danger under the "care" of its owner.<sup>55</sup> But because animals are considered property,<sup>56</sup> the Fourth Amendment poses a challenge to law enforcement officers seeking to rescue an abused animal. This property status creates a disconnect with laws meant to protect animals and prevent animal cruelty.<sup>57</sup> At the same time, animals are properties to be used and exploited under the law, and also victims of abuse under the law.<sup>58</sup> The property paradigm curbs meaningful actions to rescue abused animals and prevent further cruelty. The property status limits how law enforcement can intervene when an animal is abused. Generally, law enforcement agents require a warrant to seize an abused animal.<sup>59</sup> Law enforcement is often hesitant to seek warrants for animal cruelty cases, or even prosecute these cases, because it can be difficult to gather the necessary evidence to support a probable cause finding or to charge a suspect.<sup>60</sup> Sometimes, the seizure of an animal can fall under an exception to the warrant requirement, such as the emergency exception; but, for this exception to apply, an officer must have an "objectively reasonable basis" to believe that there is an "immediate need for police assistance for the protection of life."<sup>61</sup> This exception applies in cases where law enforcement is overwhelmed with evidence of abuse.<sup>62</sup>

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55. See generally Munro & Thrusfield, *supra* note 11, at 388 (discussing the nature of MSBP abuse between the affected animal and the owner).

56. See, e.g., Brooke J. Bearup, *Pets: Property and the Paradigm of Protection*, 4 J. ANIMAL L. 173 (2007) (explaining animals retain their legal status as property because many consider them 'lesser beings.'). Gary L. Francione & Anna E. Charlton, *Animal Advocacy in the 21<sup>st</sup> Century: The Abolition of the Property Status of Nonhumans*, in ANIMAL LAW AND THE COURTS 20 (Taimie L. Bryant et al. eds., 2008) (providing a rich discussion on law reinforces animals' property status).

57. Gary L. Francione, *Animals as Property*, 2 ANIMAL L. i, ii (1996) ("The status of animals as property has severely limited the type of legal protection that we extend to nonhumans.").

58. *Id.*; See *Commonwealth v. Duncan*, 467 Mass. 746, 751–55 (2014) (discussing a case where law enforcement exercised the emergency aid provision under the law and seized three severely emancipated dogs without a warrant. The case also describes other similar situations of animal abuse and court intervention.)

59. Bearup, *supra* note 57, at 182.

60. Joseph G. Sauder, *Enacting and Enforcing Felony Animal Cruelty Laws to Prevent Violence Against Humans*, 6 ANIMAL L. 1, 2, 7 (2000).

61. John F. Decker, *Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions*, 89 J. CRIM. L. & CRIMINOLOGY 433, 457 (1999).

62. See *Duncan*, *supra* note 59 at 746 (2014) (providing where law enforcement seized dogs in a person's front yard that were tied up for days in extremely inclement winter weather; by the time officers stepped in, two of the three dogs already died).

But, in the context of an MSBP case, the evidence of abuse may be more nuanced.<sup>63</sup> When an owner is deliberately lying to veterinary staff and misrepresenting their animal's condition, it may not be apparent that the animal victim is in *immediate need* for police assistance.<sup>64</sup> Under the confines of the property paradigm, it can be very difficult for law enforcement to rescue animal victims in time.

However, if veterinarians are authorized to confiscate animals they believe are victims of abuse, the Fourth Amendment property status issue can be avoided. Under this protocol, a veterinarian, based on their documentation of the animal's health and wellbeing, would have the authority to take abused animals and refuse to return the animal to the suspected abusive owner. The animal would be under the custody of the veterinarian when it is handed over to a law enforcement officer—a voluntary relinquishment. The veterinarian would provide law enforcement with documentation of the animal's condition and suspected abuse to further circumvent any potential Fourth Amendment seizure issues. This information would be the basis for the probable cause necessary to support an emergency exception to the warrant requirement. And, it is likely that a case of MSBP would be an emergency situation. In the Munro and Thrusfield study, five of the nine cases ended in the death of the animals.<sup>65</sup> Additionally, it has been documented that in cases of MSBP with children, when the caregiver is faced with a diagnosis of MSBP, children sent home with these caregivers are subsequently killed.<sup>66</sup>

Pet victims of MSBP are in constant danger under the “care” of their owners. Public policy supports granting confiscation authority to minimize unnecessary cruelty, harm, or pain to animals.<sup>67</sup> Every state in the nation has a set of animal cruelty laws to combat cruelty, and each state also has a felony animal cruelty law.<sup>68</sup> These laws frame animal ownership as a privilege—not a right—which comes with obligations and affirmative duties.<sup>69</sup> When these duties are not upheld, then it logically follows that these privileges be

63. See Flannery, *supra* note 14, at 1210-11 (describing that judges and lawyers face difficult decisions the methods for obtaining the abuse evidence).

64. Phil Arkow, Coordinator, Nat'l Link Coal., *Presentation on Practical Guidance for the Effective Response by Veterinarians to Suspected Animal Cruelty, Abuse, and Neglect at the Veterinary Social Work Summit*, U. OF TEX. (Nov. 3, 2015) [hereinafter *Veterinary Social Work Summit*] (PowerPoint presentation slides available at <http://vetsocialwork.utk.edu/wp-content/uploads/2016/08/P.-Arkow-Pract.-Guidance.pdf>).

65. Munro & Thrusfield, *supra* note 11, at 386-87.

66. Rosenberg, *supra* note 9, at 554.

67. David Cassuto & Tala DiBenedetto, *Suffering Matters: NEPA, Animals, and the Duty to Disclose*, 42 U. HAW. L. REV. 41, 47 (2020) (“[A]voiding unnecessary suffering is a goal shared by humans and nonhumans alike.”).

68. *Laws that Protect Animals*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/laws-that-protect-animals/> (last visited Nov. 14, 2021).

69. Madeline Bernstein & Barry M. Wolf, *Time to Feed the Evidence: What to Do with Seized Animals*, 35 ENV'T L. REP. 10679, 10683 (2005).



forfeited.<sup>70</sup> Without effective mechanisms to intervene when these duties and obligations are not upheld, relief may not come in time for the animal to be rescued—a general goal of animal cruelty prevention policy.<sup>71</sup> Therefore, quick intervention is needed to meet the goal of minimizing and avoiding cruelty, giving meaningful effect to animal cruelty laws. Veterinarians are in a position where they can medically evaluate an animal and make an educated determination of whether the animal has been abused.<sup>72</sup> Granting them the authority to confiscate suspected abused animals gives effect to anti-cruelty laws and policies and also rightfully elevates animals' status as victims under these laws. This scheme promotes the goals of improving animal protection laws and policies where the hands of law enforcement are currently tied.

Intervention requires veterinary education and awareness of MSBP with pet victims so these cases can be properly identified and documented. Calls for increased training and education about clinical indicators of this abuse have been raised in Europe, but the need for increased awareness of MSBP in pets is also present in the United States.<sup>73</sup> Some guidelines have been established to help veterinarians identify MSBP in their clients,<sup>74</sup> but more widespread recognition and education is needed to catch more of these cases that could be going unseen. However, veterinarians may not feel comfortable getting involved with animal abuse cases because of the lack of training in recognizing and identifying animal cruelty or abuse.<sup>75</sup> With proper training, veterinarians can be competent and comfortable in identifying this insidious form of abuse and can take the proper action.<sup>76</sup> These professionals are the primary actors in a position to recognize MSBP abuse—their ability to recognize it and take action is vital.

Strengthening abuse reporting requirements can help veterinarians feel comfortable taking this action by reporting the abuse. Currently, twenty states require veterinarians to report suspected animal abuse to proper

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70. *Id.* at 10683–84.

71. H.R. 724, 116th Cong. (2019–2020), <https://www.congress.gov/bill/116th-congress/house-bill/724/text>.

72. Bernstein & Wolf, *supra* note 69, at 10682.

73. Phil Arkow, *Recognizing and Responding to Cases of Suspected Animal Cruelty, Abuse, and Neglect: What the Veterinarian Needs to Know*, 6 VETERINARY MED.: RES. AND REPS., 349, 352, 354 (2015).

74. Phil Arkow, Veterinary Social Work Summit, *supra* note 64; ARKOW ET AL., PRACTICAL GUIDANCE FOR EFFECTIVE RESPONSE BY VETS, *supra* note 53, at 4-7; *Animal Abuse & Veterinary Toxicology: Illicit Substances & Munchausen by Proxy*, ANKARA UNIV., [https://acikders.ankara.edu.tr/pluginfile.php/115401/mod\\_resource/content/0/toxicology%20week%2014.pdf](https://acikders.ankara.edu.tr/pluginfile.php/115401/mod_resource/content/0/toxicology%20week%2014.pdf) (last visited Nov. 14, 2021).

75. Lori Donley, Gary J. Patronek & Carter Luke, *Animal Abuse in Massachusetts: A Summary of Case Reports at the MSPCA and Attitudes of Massachusetts Veterinarians*, 2 J. APPLIED ANIMAL WELFARE SCI. 59, 772 (1999).

76. Arkow, *Veterinary Social Work Summit*, *supra* note 64.

authorities.<sup>77</sup> Other states have voluntary reporting statutes that allow them to report abuse, while fourteen states have laws that neither allow nor require reporting suspected abuse.<sup>78</sup> In contrast, all states have some kind of reporting requirement for child abuse and child abuse hotlines to help facilitate reporting.<sup>79</sup> Statutes requiring abuse reporting could also grant the authority to confiscate abused animals. These statutes would elevate animals' status as victims over their status as property—as it should be when animals are abused.

After the animal is lawfully confiscated by the veterinarian and turned over to law enforcement, the animal can be temporarily placed with a shelter organization, like the Humane Society or the ASPCA, while awaiting a swift civil dispositional hearing regarding the animal's ownership. A strong partnership between all three of these actors, similar to the relationship between doctors, law enforcement, and Child Protective Services, will be vital for the effective rescue of pet victims of MSBP.<sup>80</sup>

*B. Provide Swift Civil Dispositional Hearings Based on the Owner's Ability to Adequately Care for the Pet*

Once an abused animal is confiscated by a veterinarian and turned over to law enforcement, a swift civil dispositional hearing based on the owner's fitness should be held to determine the ownership status of the animal. These proceedings acknowledge the property status of animals but consider their status as victims and as living creatures more important.<sup>81</sup> If more widely implemented, these kinds of proceedings could provide the most relief to pet victims of MSBP.

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77. Rebecca F. Wisch, *Table of Veterinary Reporting Requirement and Immunity Laws*, ANIMAL LEGAL & HIST. CTR. (2020), <https://www.animallaw.info/topic/table-veterinary-reporting-requirement-and-immunity-laws>.

78. *Id.*

79. Jeffrey L. Brown, *Physicians Have Ethical, Legal Obligation to Report Child Abuse*, AAP NEWS & J. (Mar. 2012), <https://www.aappublications.org/content/33/3/20.1>; CHILD.'S BUREAU, U.S. DEP'T HEALTH & HUM. SERVS., MANDATORY REPS. OF CHILD ABUSE AND NEGLECT 2 (2019), <https://www.childwelfare.gov/pubPDFs/manda.pdf>.

80. *See generally* Diane DePanfilis, CHILD PROTECTIVE SERVS.: A GUIDE FOR CASEWORKERS 2018 (2018), <https://www.childwelfare.gov/pubPDFs/cps2018.pdf> ("It takes professionals and citizens alike to recognize, identify, and report suspected incidents of child maltreatment to CPS. Medical personnel, educators, childcare providers, mental health professionals, law enforcement, clergy, and other professionals often are in a position to observe families and children and to identify possible signs of abuse or neglect.").

81. *See generally* Webinar Presentation: Jennifer H. Chin, *Pre-Conviction Forfeiture of Seized Animals: Considerations for Justice Professionals Presentation*, JUST. CLEARINGHOUSE (June 25, 2019), <https://www.justiceclearinghouse.com/esource/pre-conviction-forfeiture-of-seized-animals-considerations-for-justice-professionals/> (discussing practical tips for helping animals involved in these proceedings).

Civil forfeiture laws provide for proceedings that legally separate a pet and an owner outside of the criminal system—these are entirely separate procedures from any potential criminal charges.<sup>82</sup> These procedures are particularly valuable in cases where law enforcement may not prosecute, which is likely in a case of MSBP.<sup>83</sup> Relief for the abused animal does not hinge on the outcome of criminal prosecutions. There are several different kinds of civil proceedings that exist among the states that can legally separate a pet and an owner: unfit owner proceedings, bond and forfeiture proceedings, liens, and some proceedings that provide a combination or hybrid of these methods.<sup>84</sup>

Unfit owner proceedings determine the ownership of an animal based on the owner's fitness; this is the least prevalent civil forfeiture method.<sup>85</sup> These are civil proceedings where a court determines whether a defendant is able to provide adequate care to the seized animal.<sup>86</sup> This is unlike the most prevalent civil forfeiture method, bond and forfeiture,<sup>87</sup> where ownership is determined based on whether the owner can pay for the housing, care, and medical treatment required for the seized animal.<sup>88</sup> The major inquiry of unfit owner proceedings is the wellbeing of the animals in the care of the owner, which elevates the animal's best interest over their status as property.<sup>89</sup>

Because the adequate care of the animal is the purpose of these proceedings, unfit owner statutes have the potential to provide the most relief to pet MSBP victims—abusive owners do not have the option to simply pay a bond and maintain ownership of the animal. In an unfit owner proceeding, the seizing agency must demonstrate by a preponderance of the evidence that the owner is not able to adequately provide for their animal.<sup>90</sup> This

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82. *Id.*

83. See Becky Little, *Why Munchausen by Proxy Can Be So Hard to Prove in Court*, TRUE CRIME BLOG: STORIES & NEWS (March 31, 2020), <https://www.aetv.com/real-crime/munchausen-by-proxy-cases-court> (supporting the struggle that law enforcement faces in prosecuting MSBP).

84. Chin, *supra* note 81.

85. *Id.*

86. *Id.*; see also FLA. STAT. § 828.073 (2020) (illustrating the means by which a neglected or mistreated animal may be seized from their owner and cared for in Florida).

87. See generally *Cost of Care Legislation*, ASPCA, <https://www.aspc.org/animal-protection/public-policy/cost-care-legislation> (last visited Sept. 17, 2021) (illustrating proceedings involve a judicial hearing for the owner of a seized animal in which, if the court finds by a preponderance of the evidence that the animal was abused, the owner is either required to pay for the cost of care of the animal while the animal is seized or relinquish property ownership in the animal); Bernstein & Wolf, *supra* note 69, at 10686–89 (providing that proceedings for seizure or forfeiture of neglected or abused animals vary widely by state).

88. Chin, *supra* note 81.

89. See Allie Phillips, Webinar Presentation: *Release the Hounds: Using Pre-conviction Forfeiture to Save Seized Animals from Re-victimization*, NAT'L DIST. ATT'Y ASS'N, <https://ndaa.org/resource/release-the-hounds-using-pre-conviction-forfeiture-to-save-seized-animals-from-re-victimization/> (last visited Nov. 14, 2021).

90. See FLA. STAT. § 828.073 (2020) (showing the evidence used in determining an owner's fitness to have custody of an animal in Florida).

proceeding is most likely the best option to separate a pet victim of MSBP from its abuser if the veterinarian has documentation of the clinical factors of MSBP and the abuse suffered by the animal.

An example of this kind of provision is Florida Statute § 828.073.<sup>91</sup> This provision provides a “means by which a neglected or mistreated animal may be . . . removed from its present custody.”<sup>92</sup> Under this section, a law enforcement officer or an association for the prevention of cruelty to animals can “lawfully take custody of an animal found neglected or cruelly treated by removing the animal from its present location.”<sup>93</sup> After the seizure, the seizing party must file a petition within 10 days seeking relief under the section. In addition, a hearing to determine “whether the owner . . . is able to adequately provide for the animal and is fit to have custody of the animal” is held within 30 days after the filing.<sup>94</sup> If the court finds that the owner is unfit to provide for their animal, the court can order that the owner “have no further custody of the animal” and that the animal can be “remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society . . . or any agency or person the judge deems appropriate.”<sup>95</sup> In determining the fitness of an owner, the court will evaluate several factors, including:

1. Testimony from the seizing agent and other witnesses regarding the condition of the animal when it was seized and conditions under which the animal was kept;
2. Veterinary testimony and evidence;
3. Testimony and evidence regarding the type and amount of care provided to the animal;
4. Expert testimony as to the proper and reasonable care for the particular kind of animal in question;
5. Testimony from witnesses regarding the prior treatment or conditions of the animal;
6. The owner’s past record of judgments under the animal cruelty chapter;
7. Prior convictions of animal cruelty; and
8. Other material/relevant evidence.<sup>96</sup>

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91. FLA. STAT. § 828.073 (2020).

92. *Id.* § 828.073(1)(a).

93. *Id.* § 828.073(2)(a). Although this statute gives law enforcement the authority to remove an abused animal from its current location, veterinarians are still in the best position, especially with respect to MSBP victims, to determine when an animal has been abused. Granting veterinarians the authority to similarly confiscate can provide more effective relief to victims.

94. *Id.* § 828.073(2).

95. *Id.* § 828.073(4)(c)(1).

96. *Id.* § 828.073(5)(a)-(h).

When challenged by a plaintiff, whose hundreds of severely neglected dogs were seized pursuant to the statute, the Florida Court of Appeal for the Fifth District found that the petitioning agency must show by “clear and convincing evidence” that there is a “lack of proper and reasonable care of the animal.”<sup>97</sup> Once the petitioning agency does this, the burden then flips to the owner to demonstrate their fitness to care for the animal by clear and convincing evidence.<sup>98</sup>

Iowa has a similar law providing for the “rescue of threatened animals.”<sup>99</sup> This statute states that law enforcement officers who have cause to believe that an animal is threatened must rescue that animal and can do so by entering both public and private property.<sup>100</sup> However, the Fourth Amendment—among other laws and restrictions—applies to such entries.<sup>101</sup> After the rescue, the owner must be notified of the animal’s seizure, and a dispositional hearing for the animal is held within 10 days of the seizure.<sup>102</sup> Pursuant to the civil dispositional hearing, the court will decide if the owner is a threat to the animal.<sup>103</sup> If the court finds that the owner did not threaten the animal, it is returned to the owner’s custody. However, if the court finds the owner threatened the animal, it orders the local authorities to dispose of the animal in the manner appropriate for the animal’s welfare.<sup>104</sup> The court can also order the that owner to pay for costs incurred by the local authority, court costs, and other expenses related to the investigation.<sup>105</sup> Importantly, the inquiry for this proceeding is based on the animal’s welfare—whether the animal is threatened in the care of its current owner.<sup>106</sup> The court’s determination is based on what is the best custody situation for the animal.<sup>107</sup>

There are several advantages to unfit owner proceedings with respect to protecting animal victims. First, the burden of proof is significantly lower than in criminal proceedings. In the Florida statute, the burden of proof is “clear and convincing evidence,”<sup>108</sup> whereas the burden for a criminal

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97. *Brinkley v. County of Flagler*, 769 So. 2d 468, 472–73 (Fla. Dist. Ct. App. 2000).

98. *Id.* at 473.

99. IOWA CODE § 717B.5 (2021).

100. *Id.* § 717B.5(1).

101. *Id.*; *see also* *City of Dubuque v. Fancher*, 590 N.W.2d 493, 495 (Iowa 1999) (“We conclude a challenge to the propriety of the seizure of neglected animals does not impact the authority of the city to file a petition for disposition or the jurisdiction of the district court to hear and decide the petition.”).

102. IOWA CODE § 717B.5(2)-(3) (2021).

103. *Id.* § 717B.4(2).

104. *Id.* § 717B.4(3).

105. *Id.* § 717B.4(3)(a).

106. *Id.* § 717B.4(3).

107. *Id.* §§ 717B.4–717B.5.

108. *Brinkley*, *supra* note 97, at 473.

proceeding is proof beyond a reasonable doubt.<sup>109</sup> In MSBP cases, where the owner is intentionally deceitful in interactions with veterinary staff and others regarding the health of their pet, compiling the evidence to prove abuse beyond a reasonable doubt can be challenging.<sup>110</sup> Because of this, a case of MSBP with a pet victim would likely not be prosecuted.

Second, these proceedings do not turn on the outcome of any criminal proceedings. In fact, the owner may never even make it into court.<sup>111</sup> These civil proceedings are entirely separate processes that deal only with the disposition of the seized animal.<sup>112</sup> In no way is a criminal conviction guaranteed in any case, but this is especially true when the case involves MSBP.<sup>113</sup> Civil proceedings provide a means to look out for the welfare of the animal regardless of what happens with any potential criminal cases.<sup>114</sup> Additionally, swift and successful civil forfeiture proceedings give the animal the opportunity to recover from the abuse and trauma they have endured at the hands of their owners and to be adopted, beginning a new life in a loving home.<sup>115</sup>

Third, and most importantly, the custody of the animal is determined by evaluating whether the owner is fit to care for the animal—a determination keeping the animal’s best interest in mind.<sup>116</sup> This is similar, although not analogous, to the CPS procedures which evaluate a child’s home life in determining what intervention will best suit the child and family.<sup>117</sup> Unfit owner proceedings, while recognizing the fact that animals are considered property, elevate their status as victims under the law. These proceedings strongly consider what is best for the animal victim—instead of prioritizing an abuser’s property interests.

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109. Legal Info. Inst., *Beyond a Reasonable Doubt*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/beyond\\_a\\_reasonable\\_doubt#:~:text=Beyond%20a%20reasonable%20doubt%20is,conviction%20in%20a%20criminal%20case.&text=This%20means%20that%20the%20prosecution,the%20evidence%20presented%20at%20trial](https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt#:~:text=Beyond%20a%20reasonable%20doubt%20is,conviction%20in%20a%20criminal%20case.&text=This%20means%20that%20the%20prosecution,the%20evidence%20presented%20at%20trial) (last visited Oct. 24, 2021).

110. See *Why Prosecutors Don’t Prosecute*, ANIMAL L. DEF. FUND, <https://aldf.org/article/why-prosecutors-dont-prosecute/#:~:text=First%2C%20many%20courts%20are%20under,or%20all%20animal%20abuse%20cases> (last visited Nov. 16, 2021) (explaining how lack of evidence is often a barrier to prosecutors filing criminal charges in animal cruelty cases).

111. Chin, *supra* note 89.

112. Bernstein & Wolf, *supra* note 69, at 10684.

113. Rosenburg, *supra* note 9, at 556.

114. Bernstein & Wolf, *supra* note 69, at 10679–80.

115. *Id.* at 10684.

116. *Position Statement on Protection of Animal Cruelty Victims*, ASPCA, <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statement-protection-animal-cruelty-victims> (last visited Sept. 21, 2021).

117. DePanfilis, *supra* note 80, at 99.

## CONCLUSION

With increased study, more pet victims of MSBP will be identified. While animals are still considered primarily property under the law, the means available to rescue abuse victims of MSBP are slight. Law and policy must take steps to elevate animals' status as victims over their status as property to give meaningful effect to anti-cruelty laws. This can happen by passing legislation that grants veterinarians the authority to confiscate abuse victims. Additionally, the widespread implementation of civil forfeiture laws, providing for hearings that determine ownership based on their fitness, similarly elevate the best interests of the animal victim over the owner's property interest. Without the means to intervene in cases of MSBP, these victims may remain unseen, and any attempt to rescue them may come too late. The law must see these animals and take meaningful action to aid the most vulnerable victims of this deadly phenomenon.